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In re Application of
Grech et al.
Application No.: 10/540,006
PCT No.: PCT/US03/38021
Int. Filing Date: 26 November 2003
Priority Date: 30 November 2002
Attorney Docket No.: 4623C-083/NPB
For: Reduced Water Consumption Flush Toilet

DECISION

This is in response to the petition under 37 CFR 1.182 filed on 14 March 2007, which also includes a request for relief under 37 CFR 1.183.

DISCUSSION

In a Decision mailed on 29 January 2007, the declaration of inventorship filed on 14 November 2006 was not accepted, without prejudice, because

Inspection of the declaration accompanying the instant renewed submission under 37 CFR 1.497(d) reveals that it nominates "Michael Harris" in place of "HARRIS, Mike" who is nominated in the published international application. MPEP 605.04(b) states in part that

Except for correction of a typographical or transliteration error in the spelling of an inventor's name, a request to have the name changed from the typewritten version to the signed version or any other corrections in the name of the inventor(s) will not be entertained, unless accompanied by a petition under 37 CFR 1.182 together with an appropriate petition fee.

Since change described above represents more than a mere typographic error or phonetic misspelling of applicant's name, a petition (and fee) under 37 CFR 1.182 is required. *See also* MPEP MPEP § 201.03(b). Alternatively, applicants may submit a new declaration naming the same inventive entity as the published international application.

Petition Under 37 CFR 1.182

In response, petitioner urges acceptance of the declaration filed on 14 November 2006 because "Michael Harris is the same person as HARRIS, Mike that was less formally nominated in the published international application." Though this statement clearly communicates petitioner's reasoning for requesting acceptance of the declaration, petitioner has not provided an appropriate formal showing that the Michael Harris nominated in the declaration is the same person as the HARRIS, Mike nominated in the published international application. Appropriate evidence in this regard would ideally include a statement signed by Mr. Harris attesting to the facts involved. It is noted that counsel has not stated that his assertion as to Mr. Harris' name and identity is made on the basis of first-hand knowledge.

With regard to the petition fee, counsel has paid \$130.00 toward the \$400.00 fee. The balance of \$270.00 is being charged to Deposit Account No. 08-0750 as authorized by the petition.

Petition Under 37 CFR 1.183

Petitioner states that "Applicant believes that all the deficiencies noted in the Decision have been corrected. To any extent necessary, Applicant petitions the Commissioner under 37 CFR 1.183 to suspend or waive the technical requirements of the appropriate regulations."

§ 1.183 Suspension of rules.

*In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).*

The circumstances of this application do not present "an extraordinary situation" in the sense that the regulations and practice already contemplate an adequate avenue for relief - specifically, relief is available by submitting a proper showing under 37 CFR 1.182 as described above. Moreover, it is not the case that "justice requires" suspension or waiver because petitioner has not shown that the required showing under 37 CFR 1.182 imposes an undue burden on applicants. Therefore, it would not be appropriate to grant the requested relief under 37 CFR 1.183 at this time.

CONCLUSION

The petition under 37 CFR 1.182 is **DISMISSED**, without prejudice.

The petition under 37 CFR 1.183 is **DISMISSED**, without prejudice.

The balance of the petition fee, in the amount of \$270.00, is being charged to Deposit Account No. 08-0750 as authorized by the petition.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Failure to timely reply will result in **ABANDONMENT** of this application.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the PCT Legal Office.



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